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LAW AND MULTICULTURALISM
Spring 2013; SYRUP/Perspectives/ICT Course

PROFESSOR AYELET SHACHAR

VOLUME TWO

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UNIVERSITY OF
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FACULTY OF LAW

LAW AND MULTICULTURALISM

Spring 2013; SYRUP/Perspectives/ICT Course

PROFESSOR AYELET SHACHAR

Class Meeting: Wednesday 10:30-12:20

Office Hours (FL 408): Wednesday 1:30-2:30 or by appointment

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All over the world, arguments over the recognition that ought to be afforded to religious faiths and practices has risen to the forefront of public debate. This course will explore whether, when, how, based on what criteria, and within what limits, the law can and should recognize identity-based claims for multicultural accommodation, inclusion in, or insulation from the purview of the state's legal ordering. Informed by contemporary debates in political and legal theory, as well as Canadian law and comparative legal practice, the course will identify the core dilemmas of citizenship and identity raised by such claims. Specific topics that will be explored in the course include: the regulation of the family, the separation of church and state, private arbitration tribunals, ethical pluralism in public schools, the cultural turn in citizenship, sentencing circles in criminal law, religious dress codes, medical decisions concerning children, and the relevance of identity-based considerations in custody and adoption determination. The final part of the course will explore new legal-institutional designs aimed at reducing tensions between the recognition of cultural diversity and the protection of individual rights.

Reading Materials

The reading materials will draw on Canadian and comparative case law and legislation, as well as contemporary political theory literature. It is assembled in a course packet, *Law and Multiculturalism*, edited by Professor Shachar (Faculty of Law, University of Toronto, 2012). The course packet is available for purchase at the bookstore in the basement of the Law School. Additional copies will be placed on short-term reserve at the Bora Laskin Law Library.

Evaluation

Regular class attendance and substantive participation in weekly discussions; a 1,250 word (5-page) reaction paper to be submitted during the term (30%); and a twenty-four hour take-home examination (70%) which may be signed-out between 9:00 a.m. to 4:00 p.m. for a 24 hour period during the examination period, Monday to Thursday, excluding weekends to the Faculty’s deadline for second term written work.

VOLUME ONE

I. FOUNDATIONS

1.1 Introduction

Objectives and design of the course.

Canadian Charter of Rights and Freedoms, s 27, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11. 1

Canadian Multiculturalism Act, R.S.C. 1985, c. 24 (4th Supp.). 2

1.2 Why Accommodate? Justifications and Tensions

Santa Clara Pueblo et al v Martinez et al, 436 US 49 (1978). 12

Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford University Press, 1995) 10-44. 19

Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women’s Rights* (Cambridge: Cambridge University Press, 2001) 17-44. 38

Martha Minow, “Identities” (1991) 3 Yale JL & Human 97. 54

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2.1 Citizenship and the Boundaries of Religious Accommodation in the Public Sphere – Canada, France, and Beyond

Rogers Brubaker, “Citizenship as Social Closure,” in *Citizenship and Nationhood in France and Germany* (Harvard University Press, 1992) 21-34. 88

“France/Secularism,” Statement made by President Jacques Chirac, France, 28 January 28 2004. 104

Patrick Weil, “A nation in diversity: France, Muslims and the headscarf” <i>Open Democracy</i> (25 March 2004).	105
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<i>Multani v Commission scolaire Marguerite-Bourgeoys</i> , 2006 SCC 6, [2006] 1 SCR 256.	135
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Umair Abdul, “R v NS – Behind the Veil of Niqabs in the Witness Stand” <i>The Court</i> (26 October 2010).	155

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Citizenship and Immigration Canada, “Discover Canada: The Rights and Responsibilities of Citizenship” <i>Citizenship and Immigration Canada</i> (2010).	184
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Bill 94, <i>An Act to establish guidelines governing accommodation requests within the Administration and certain institutions</i> , 1st Sess, 39th Leg, Québec, 2010.	193
“Kirpan banned at Que. national assembly”, <i>CBC News</i> (9 Feb 2011)	198
Silvia Borelli, “Towards a Less Secular Europe? The Decision of the Grand Chamber of the European Court of Human Rights in <i>Lautsi v Italy</i> ” (2011) 15 <i>Insights</i> .	200
<i>Lautsi v Italy</i> [GC], No 30814/06, [2011] ECHR.	207

2.3 Community, Education and Diversity

Avishai Margalit & Moshe Halbertal, “Liberalism and the Right to Culture” (2004) 71 <i>Social Research</i> 529.	210
<i>Wisconsin v Yoder</i> , 406 US 205 (1972).	211

Adam Adler, "Wisconsin v Yoder – Maximizing Religious Choice" <i>The Boothe Prize Essays</i> (Fall 2008).	214
"Accommodations for Religious Observances" (2012), online: University of Toronto < http://www.viceprovoststudents.utoronto.ca/publicationsandpolicies/guidelines/religiousobservances.htm >.	219
<i>SL v Commission scolaire des Chênes</i> , 2012 SCC 7.	221
<i>R v Jones</i> [1986] 2 SCR 284.	234
S M Corbett, "Adler v Ontario – The Troubling Legacy of A Compromise" (1997) 8 Constitutional Forum 64.	238

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2.4 Where Do Children Belong? Custody and Visitation; "Identity" Matters

Linda J Lacey, "Liberal Thought and Religion in Custody and Visitation Cases," in Stephen M Feldman, ed, <i>Law and Religion: A Critical Anthology</i> (New York: NYU Press, 2000) 411.	1
<i>Kimberly Van De Perre v Theodore Edwards</i> [2001] 2 SCR 1014.	10
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<i>Mississippi Band of Choctaw Indians v Holyfield</i> , 409 US 30 (1989).	38
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<i>Alberta (Director of Child Welfare) v H (B)</i> [2002] Alta D 360.25.70.20-02.	70

Jenny Percival & Paul Lewis, “Teenager Who Wins Right to Die: ‘I Have Had Too Much Trauma’”, <i>The Guardian</i> (11 November 2008).	83
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“Position Statement on the Proposed Implementation of Sections of Muslim Law [Sharia] in Canada” <i>Canadian Council of Muslim Women</i> (25 May 2004).	158
Marion Boyd, “Religiously-Based Alternative Dispute Resolution: A Challenge to Multiculturalism” (2006) <i>Canadian Diversity</i> .	165
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Ayelet Shachar, "Feminism and Multiculturalism: Mapping the Terrain," in David Owen & Anthony Laden, eds., <i>Multiculturalism and Political Theory</i> (Cambridge University Press, 2007) 130-136.	186
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